

¹ K.S.A. 44-501(a).

The ALJ found the medical evidence showing the ACL tear was a new injury to be inconclusive. The ALJ denied benefits finding that claimant had a preexisting knee condition and almost any everyday activity would aggravate it, citing Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

Because the accident occurred while claimant was at work, the accident occurred in the course of claimant's employment. However, the accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act. See Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

In Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a risk analysis whereby it categorized risks into three categories: (1) those distinctly associated with the job; (2) risks that are personal to the workman; and (3) neutral risks which have no particular employment or personal character.

This case may be distinguishable from Martin in that it is not clear that almost any everyday activity would have a tendency to aggravate claimant's preexisting knee condition. Claimant's knee had been doing well since the 1995 surgery and this 1998 accident included a new injury to the meniscus. Conversely, claimant has failed to prove that this injury was not due to the preexisting condition and hence a personal risk. The medical evidence, while equivocal on this point, suggests a direct causal relationship between the preexisting condition and the new injury.

Scott Ronsse's current left knee diagnosis is medial meniscal tear with superimposed chronic ACL insufficiency and possible complete ACL tear. Mr. Ronsse has a long history of chronic ACL insufficiency that has been documented by two previous arthroscopies, the most recent of which was performed on 7-21-95.

A recent MRI of the left knee has confirmed the medial meniscal tear which, I assume, occurred as he was going up stairs at work on 8-23-98. Obviously, his ACL insufficiency or tear is pre-existing and may have predisposed him to this recent meniscal injury. (September 21, 1998 report by Dr. Michael J. Schmidt.)

Based upon the record compiled to date, the Appeals Board finds that claimant's injury resulted from a personal risk and, therefore, did not arise out of the employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 11, 1998, entered by Administrative Law Judge Bryce D. Benedict, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Mitchell D. Wulfekoeter, Topeka, KS
Bret C. Owen, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director